

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Applications of)
)
NO WIRE, LLC) FCC File Nos. 9508168 & 9509597
)
To Provide 39 GHz Point-to-Point)
Microwave Radio Service)

ORDER ON RECONSIDERATION

Adopted: April 10, 2000

Released: April 12, 2000

Before the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. The Public Safety and Private Wireless Division (Division) has before it a petition for reconsideration (Petition) filed on January 20, 2000, on behalf of three former members of No Wire, LLC (No Wire) – namely, Messrs. Frederick R. Adler, Joseph K. Pagano and Milton A. Gilbert (collectively, Petitioners).¹ Petitioners acknowledge that ownership of No Wire was transferred to WinStar Wireless Fiber Corp. (WinStar) before the filing of its Petition. Petitioners nonetheless request reconsideration of the Division’s Licensing and Technical Analysis Branch (Branch) dismissal of the above-captioned applications for authorization to provide service in the 38.6 to 40.0 GHz (39 GHz) band. For the reasons stated herein, we dismiss the Petition.

2. As an initial matter, we do not believe that the Petitioners, as former members of No Wire, have requisite standing to raise this issue. In this regard, we note that the Petitioners have not participated previously in this proceeding and, thus, are not parties to this proceeding. Under the Commission’s rules, a non-party seeking reconsideration of a Commission action must state with particularity the manner in which the person’s interests are adversely affected by the action.² In this case, Petitioners sold their interest in NoWire to WinStar, prior to the Branch’s disposition of the subject application. Petitioners contend that pursuant to their agreement with WinStar, they are to receive additional compensation in the event that any of the applications pending at the time of the transfer are granted by the Commission. Petitioners further contend that the agreement also provides that WinStar “will take such actions as it deems appropriate...” With respect to the subject applications, Petitioners note that WinStar has declined their request to seek reconsideration. Petitioners argue that they submitted the Petition to enforce their agreement with WinStar.³ While Petitioners may have an interest in the possible future grant of these applications,⁴ we do not believe that such interest is a sufficient basis for finding that the Petitioners have standing in this

¹Petitioners Petition for Reconsideration (filed Jan. 20, 2000) (Petition).

² *Banks Broadcasting Company, Inc.*, 60 Rad. Reg. 2d 1454, 1456 ¶ 8 (P&F 1986).

³ Petition at 2.

⁴ *Id.*

proceeding. In fact, we are concerned that the Petitioners' are involving the Commission in a private contractual dispute with WinStar and note that such private contractual disputes lie outside of the scope of our inquiry.⁵ Thus, we find that Petitioners lack standing and dismiss the Petition on that basis.

3. Notwithstanding this procedural defect, Petitioners contend that mutual exclusivity is not a proper basis for dismissing No Wire's applications where it has not been afforded a meaningful opportunity to resolve such mutual exclusivity.⁶ We disagree. We find that the Branch properly dismissed the subject applications. The Commission has established and affirmed a processing policy concerning 39 GHz channels that includes the dismissal of (a) applications that failed to meet the thirty-day public notice requirement as of November 13, 1995; (b) all new applications, major modification applications and amendments filed on or after November 13, 1995; and (c) applications whose mutual exclusivity was not resolved by December 15, 1995 and amendments resolving mutual exclusivity that were filed on or after December 15, 1995.⁷ Therefore, we conclude that the Branch action dismissing the subject applications was consistent with such processing policy.

4. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by Petitioners on January 20, 2000, IS DISMISSED.

5. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

⁵ *Banks Broadcasting Company, Inc.*, 60 Rad. Reg. 2d at 1457 ¶ 11.

⁶ Petition at 1.

⁷ See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, *Report and Order and Second Notice of Proposed Rulemaking*, ET Docket No. 95-183, 12 FCC Rcd 18600, 18639-45 ¶¶ 83-97 (1997); *aff'd* Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, *Memorandum Opinion and Order*, 14 FCC Rcd 12428, 12440-51 ¶¶ 19-44 (1999).